IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

FRIDAY, THE SIXTEENTH DAY OF SEPTEMBER
TWO THOUSAND AND FIVE

PRESENT

**THE HON'BLE Mr. JUSTICE B. SUDERSHAN REDDY**

**and**
**THE HON'BLE Mr. JUSTICE C.V.RAMULU**

**WRIT APPEAL No.359 of 2002**

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 18/12/2001 in WP No.18361 OF 2001 on the file of the High Court.)

Between:

Sriraj Power (P) Ltd, Represented by its Director Ch.Srinivas
R/o 606, Bindavan Apartments, AC Guards, Hyderabad

**..... APPELLANT**

AND

1 The Secretary, Dept. of Energy Govt.of A.P
Secretariat Buildings, Hyderabad, A.P
2 The Managing Director,
Nedcap, 5-8-207/2,Pisgha, Nampally, Hyderabad
3 The Director (Hyderabad) A.P.G.E.N Co.,
Hyderabad.
4 M/s. Krishna Priya Power Pvt Ltd., Hyderabad
rep.by its Managing Director, Sri Suryanarayana Raju

**.....RESPONDENTS**

**The Court made the following :**

**JUDGMENT:** (per **C.V. RAMULU,J**)

This Writ Appeal is directed against the Judgment of a learned single Judge of this Court dated 18-12-2001 in dismissing Writ Petition No.18361 of 2001, which was filed seeking a Writ of Certiorari to call for the records from the 2nd respondent relating to the applications of the 4th respondent and that of the petitioner (appellant herein) and to quash the registration of site at M 9/4 of Power Canal joining into forebay reservoir of lower Sileru Project at Motugudem village, as illegal and arbitrary and consequently to direct the respondents to register the proposed site of the petitioner-company.

The writ petitioner is the appellant. The parties are hereinafter referred to as arrayed in the Writ Petition.

Government of Andhra Pradesh accorded approval to the erstwhile Andhra Pradesh State Electricity Board for entrusting Mini Hydel schemes in the State to private developers for construction and operation of the schemes, subject to certain conditions, under G.O.Ms.No.149, Energy (Power-I) Department, dated 15-11-1995. Condition No.2, which is relevant, reads as follows:

> "2. When the developers identify the sites by themselves and carry out the investigations, sites will be allotted on first-come-first-serve basis. However, when A.P. State Electricity Board identifies the locations and carries out the investigations, the selection of the developer will be done through the process of competitive bidding."

Petitioner-company had identified the site 'fall of the canal at forebay reservoir' before lower Sileru Power House, Chinturu Mandal of Khammam district, Andhra Pradesh. It described the site clearly in the pre-feasibility report, which was

enclosed to the application form, which was submitted to the 2nd respondent on 28-4-1999 with all relevant documents including the fees. The 2nd respondent received the applications and supplied the details of applicants and their sites from each district in a tabular form. The application of the petitioner is the first one for the site of 'fall of the canal at forebay reservoir before lower Sileru power house' and the said site must have been registered in its name and processed further for exploitation of power as per the terms and conditions stipulated in the G.O. But, the very same site was registered in the name of the 4th respondent. Therefore, the same is arbitrary and illegal. In fact, the petitioner was enquiring about the registration of the site. There was no response from the 2nd respondent and ultimately it was registered in favour of the 4th respondent. The petitioner filed a complaint on 2-1-2001 about the situation. Aggrieved by the arbitrary conduct of the 2nd respondent in selecting the 4th respondent for registration of the site for Mini Hydel Power Project in the private sector, the Writ Petition was filed. A similar case in Writ Petition No.4737 of 2000 was also filed.

Respondent No.2 filed a detailed counter affidavit denying the allegations made by the petitioner and asserting *inter alia* that the petitioner applied for Mini Hydel Scheme 'canal fall at forebay reservoir, pick up dam to forebay reservoir canal, Chinturu, Khammam district'. The capacity is 1.1 MW and the description of the scheme in paragraph-4 of the writ affidavit is different from what was applied i.e. 'fall of the canal at forebay reservoir before lower Sileru power House, Chinturu, Khammam district'. Further, it was asserted that the petitioner has not submitted all the relevant documents; such as, (1) Certified copy of registration of the company, (2) Balance sheet of last 3 years in case of existing company, (3) Name and qualification/bio-data of technical director; (4) Capacity of promoters to raise equity and loan with documentary evidence. The sites applied for by the petitioner and the 4th respondent are different and hence, there is no overlapping of the sites and, in fact, the site applied for by the petitioner is still available for consideration.

Respondent No.4 also filed a counter affidavit denying the allegations made by the petitioner and asserting that the petitioner has not fulfilled the statutory obligation so as to invoke the jurisdiction of this Court under Article 226 of the Constitution of India. The registration of the site at M 9/4 pursuant to its application is legal and justified. Petitioner deliberately, without giving correct factual position as to the site,

has filed the Writ Petition only for the purpose of bargaining with the 4th respondent for a share. The application filed by the petitioner is nothing to do with the site applied for by it and as per the guidelines, the site registered was in its name for establishing a Mini Hydel Power Generation Project. The application of the petitioner is for erection of a Mini Hydel Project - '**canal fall at forebay reservoir, pick up dam to forebay reservoir canal, Chinturu Mandal of Khammam district**'; whereas, the application of the 4th respondent is specifically for '**MHS at 9/4 power canal joining into forebay reservoir at lower Sileru Project at Motugudem village, Khammam district**'. Petitioner's proposal is canal based project, whereas the 4th respondent's project is reservoir based project. The capacity of the petitioner's energy generation is 5.8 MU, whereas it is 7.80 MU in respect of the 4th respondent as per pre-feasibility report. Thus, as per the scheme applied, the petitioner's site and the site of the 4th respondent are totally different. There is no interference of the 4th respondent with the scheme applied for by the petitioner. After a comprehensive enquiry, a detailed project report was submitted and the same was referred to AP Genco and the application was processed. There is no illegality or irregularity in registration of the scheme applied for by the 4th respondent. Though the petitioner applied at the earliest point of time, since the sites are at different levels, the registration of the site in favour of the 4th respondent cannot be said to be either arbitrary or illegal. The petitioner with a vengeance and *mala fide* intention, filed the Writ Petition. After hearing the parties and after appreciation of the conditions in G.O.Ms.No.149, dated 15-11-1995, the learned single Judge dismissed the Writ Petition holding that the sites applied for by the petitioner and the 4th respondent are different and distinct in all respects. Therefore, there is no illegality or irregularity committed by the 2nd respondent-authority in registering the site in favour of the 4th respondent. Further, the petitioner has not fulfilled all the conditions as pointed out by the 2nd respondent for the site 'canal fall at forebay reservoir, pick up dam to forebay canal, Chinturu Mandal, Khammam district'. Therefore, there is no question of infringement of any legal or enforceable right and as such, the Writ Petition is misconceived. Aggrieved by the same, the present Writ Appeal is filed.

We have given our anxious consideration to the respective submissions made by

the learned counsel on either side and perused the Order under challenge and also the other material made available on record.

This case falls into the first limb of condition No.2 of G.O.Ms.No.149, dated 15-11-1995 i.e. the developers identify the sites by themselves and carry out the investigations and the sites will be allotted on first come first serve basis. The application filed by the petitioner, admittedly, is the earliest in point of time i.e. 28-4-1999 and the application filed by the 4th respondent was on 7-12-1999. Therefore, the only question that falls for consideration is whether the site applied for by the writ petitioner and the site applied for by the 4th respondent is one and the same. If so, the registration of the site in favour of the 4th respondent is valid ? Admittedly, the site applied for by the petitioner is '**canal fall at forebay reservoir, pickup dam to forebay reservoir canal, Chinturu Mandal, Khammam district**', whereas the site proposed and applied for by the 4th respondent is '**MHS at 9/4 of power canal joining into forebay reservoir at lower Sileru Project at Motugudem village, Khammam district**' . However, it seems that a letter dated 25-3-2000 was addressed by the 4th respondent to the 2nd respondent seeking change of location from Mile 9/4 to 9/5+250 ft, since on verification, it has come to 9/5+250 ft. Therefore, there was an amendment as to the site on 27-4-2000. After the amendment as to the site on 16-12-2002, the 2nd respondent considered the scheme and accorded sanction subject to DPR approval and the 4th respondent was directed to enter into an agreement with the 2nd respondent. Thus, an agreement was entered into on 31-12-2002 by the 2nd respondent with the 4th respondent. Further, on 4-12-2003 the A.P.Transco entered into power project agreement with the 4th respondent after clearance by DPR and other authorities and the said agreement is valid for 20 years.

It is the contention of the petitioner that the 2nd respondent addressed various letters to the 4th respondent for amendment/change of site, whereas such an opportunity was never given to it. Had such an opportunity was given, it could have also suggested either for change or modification of the site etc. In this case, admittedly, the original site, for convenience we may refer as 'reach', of the 4th respondent i.e. 9/4 of power canal joining into forebay reservoir of Lower Sileru Project at Motugudem village was changed to 9/5+250 ft.

A bare look at the site plan would show that the proposed site was **at canal fall at forebay reservoir**. As per the pre-feasibility report of the petitioner, the reach is '**canal fall at forebay reservoir, pickup dam to forebay reservoir canal, Chinturu Mandal, Khammam district**'; whereas, as per the pre-feasibility report of the 4th respondent, reach of scheme was '**MHS at 9/4 of power canal joining into forebay reservoir at lower Sileru Project at Motugudem village, Khammam district'** but it was revised as Mile 9/5+250ft. of power canal, which is in the forebay reservoir.

We have called for the original record relating to the 4th respondent and examined as to how the application of the 4th respondent was considered for the purpose of the amendment of the site. The Note File itself shows that the 4th respondent also applied **at 9/4 M of power canal joining forebay reservoir at lower Sileru Project at Mothugudem, Khammam district**, and hence, the scheme is at the infall of forebay reservoir and there is no interference of the scheme at 9/4 M of power canal, with the scheme of the petitioner. The application made by the 4th respondent on 25-3-2000 reads as under:

> "We would like to bring to your kind notice that in our pre-feasibility report submitted earlier for setting up MHS at Lower Sileru Project at Mothugudem (V), we have mentioned the mileage of our proposed site on power canal as M9/4 basing on the oral enquiry from the local people. However, after detailed survey conducted by our consultants, we found that the Mileage of our proposed site is M 9/5+250 (KM 15.525) of power canal joining into forbay reservoir of lower sileru project at Mothugudem (V), Khammam Dt.
>
> Hence, we request you to kindly note down the change in the mileage of our site. "

This itself would show that the 4th respondent has been favoured for the purpose of change of the site; otherwise, for all practical purposes whether it is a mistake or otherwise, the sites applied for by the petitioner as well as the 4th respondent are located at one and the same reach i.e. 9/4 M. The application of the 4th respondent reveals that opposite to the column 'brief outline of the proposal Mileages of canal drops for irrigation canals it was mentioned as '**at, M 9/4 of Power canal joining into Forebay reservoir of lower Sileru Project at Motugudem village**' . The

original application of the petitioner was missing from the file of the 2nd respondent. Whereas, in the pre-feasibility report of the petitioner, the proposed site was shown as '**canal fall at forebay reservoir, pick up dam to forebay reservoir canal, Chinturu Mandal, Khammam district**' . Therefore, whether it is 9/4 or 9/5 the description of the site of the petitioner as well as the 4th respondent is one and the same and they are overlapping. Even according to the counter filed by the 2nd respondent, the location map was not enclosed by the writ petitioner as well as the 4th respondent. The file relating to the writ petitioner at page 81, i.e., the site plan submitted by the petitioner along with the application shows that the petitioner has specifically indicated the location of the proposed power house. Since, admittedly, the application of the petitioner is at the earliest point of time, on the first come first serve principle under condition No.2 of the said G.O., the application of the petitioner ought to have been taken up in preference to the application of the 4th respondent.

Our perusal of the Note File maintained in respect of the present dispute would clearly show that initially both the parties have not given the specific location of the project. But, both of them have stated that it is **between the canal and the forebay reservoir before Lower Sileru Power House.** There is no ambiguity so far as this aspect is concerned. Respondent No.2 tried to compare the site of the petitioner with the amended site of the 4th respondent, but not with the original application filed by the 4th respondent. Respondent No.2 also tried to explain the words 'at' 'on' and 'in' forebay reservoir. The Note File indicates that the project proposed by the 4th respondent is in the forebay reservoir and the project proposed by the petitioner, is at the forebay reservoir. However, during the pendency of this litigation, when the petitioner was asked to submit the specific location map and the proposed project, it had categorically indicated that it is between the road bridge and the canal fall at forebay reservoir. Even as per the original pre-feasibility report itself, it is indicated that '**on - canal fall at forebay reservoir, pickup dam to forebay reservoir**' . This itself would mean that the petitioner wanted to locate the site on the canal fall at forebay reservoir, in between pickup dam and forebay reservoir. Whereas, the original application of the 4th respondent is for location of the project '**at, M 9/4 of power canal joining into forebay reservoir of Lower Sileru Project at Mothugudem village**' i.e. in **between pickup dam and forebay reservoir**. Therefore, the application originally filed by the petitioner as well as the 4th

respondent is for one and the same site. Thus, the petitioner's application should have been considered on preferential basis as per condition No.2 of G.O.Ms.No.149, dated 15-11-1995. Instead of doing so, the 2nd respondent has invented jugglery of words, such as, 'at forebay reservoir', 'in forebay reservoir' and 'on canal fall at forebay reservoir'. This exercise is made by the 2nd respondent only to avoid the application of the petitioner and to favour the 4th respondent. At no point of time during the consideration of application of the 4th respondent, the petitioner was put on notice. Only after filing the Writ Petition, the 2nd respondent tried to dig up as to the deficiencies in the application of the petitioner. Further, it is unfortunate that the original application of the petitioner and the documents filed along with the said application are missing from the file relating to the registration of the site of the writ petitioner. This all would show that the 2nd respondent has not considered the application of the petitioner properly before taking up the application of the 4th respondent.

Sri Nooty Ram Mohan Rao, learned counsel for the appellant-writ petitioner, raised certain issues as to the very maintainability of the application of the 4th respondent. Admittedly, the 4th respondent's company was incorporated on 8-12-1999, whereas the application was submitted on 7-12-1999; therefore, the application is not in order and the same could have been rejected. As on 7-12-1999 the company was not a juristic person. Once it is not a juristic person, the very application is not maintainable. Whereas, the learned counsel for the 4th respondent strenuously contended that on 10-12-1999 all the other documents were filed. There was no deadline for submitting other documents. May be, the application was filed on 7-12-1999 but all the formalities as required under the Companies Act have been followed and the application became rectified on 10-12-1999, on which date the 4th respondent submitted the memorandum of articles, list of directors etc. The said contention need not be gone into in view of the findings reached supra.

Sri E. Manohar, learned senior counsel appearing for the 2nd respondent, strenuously contended that the dispute is purely as to identity of the site. The conditions in G.O.Ms.No.149, dated 15-11-1995 are the guidelines and they cannot be enforced by issuing a writ by this Court. Respondent No.2 has not identified the sites. The sites are identified by private parties. There is no necessity of going into

this aspect in detail for the conclusions reached by us, as above. It is suffice to notice that since the site applied for by the writ petitioner and the 4th respondent is one and the same and the first limb of condition No.2 of the above G.O.

contemplates 'first come first serve', there was a discrimination between equals; therefore, the action of the 2nd respondent in registering the site in favour of the 4th respondent in preference to the writ petitioner is violative of Article 14 of the Constitution of India.

Learned counsel for the 4th respondent strenuously contended that all the process is completed and the site has been handed over to the 4th respondent and the work is in progress. At this stage, if the registration made in favour of the 4th respondent as to the site is disturbed, it may not only cause irreparable loss to it, but also would mar the public interest. The petitioner's application is still pending and it may pursue the matter and can also get the project approved. The erection of the project by the 4th respondent will not either any way affect the project proposed by the petitioner or in any way affect as to its viability etc. Therefore, there is no necessity of disturbing the registration made in favour of the 4th respondent.

We may not agree with the said contention of the learned counsel for the 4th respondent. In fact, the site applied for by both the parties is one and the same in the beginning. However, even on modification, the site registered in favour of the 4th respondent overlaps the plan submitted by the petitioner. Respondent No.2 misconstrued as to the sites applied for by the petitioner and the 4th respondent and the modifications made by the 4th respondent thereafter as separate one. In fact, it is on the same reach i.e. on 9/4 M to forebay reservoir. On perusal of the original records, we have noticed that nothing happened till July,2005. Some correspondence was going on and some clearances were obtained from various authorities, but the erection has not yet commenced.

For all the above reasons, the Writ Appeal is allowed and the order under challenge is set aside. The registration of the site in favour of the 4th respondent i.e. 9/5+250 ft. of power canal joining into forebay reservoir of Lower Sileru Project at Mothugudem village of Khammam district is set aside. Respondent No.2 is directed to reconsider the matter afresh, after issuing notice to both the parties. No order as to costs.

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**B.SUDERSHAN REDDY,J**

16th September, 2005

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***C.V. RAMULU, J***

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